BACKGROUND OF THE AHO CASE

In 1986, the Finnish National Board of Health asked a Law Professor at the University of Helsinki, Erkki Aurejarvi, to prepare an opinion with respect to whether tobacco manufacturers could be held liable for injuries to smokers which were claimed to be attributable to smoking cigarettes. In his June 25, 1986 opinion, Professor Aurejarvi concluded that, under Finnish law, tobacco manufacturers "are not liable at all for damage caused by tobacco as long as they adhere to the provisions of the Tobacco Act". However, Professor Aurejarvi recommended that lawsuits be filed for the purpose of gaining publicity even through "the plaintiffs know in advance that they will lose".

In May, 1988, Professor Aurejarvi (along with attorney Juha Sivenius) filed a lawsuit in the City Court of Helsinki on behalf of Pentti Aho against Suomen Tupakka OY ("STOY"), BAT's Finnish company, and OY Rettig AB ("Rettig"), RJR's licensee, claiming that Mr. Aho had developed several serious diseases as a result of his cigarette smoking.

Mr. Aho was born in 1925 and is now retired and living in Tampere, Finland. In his Complaint, Mr. Aho claimed that from 1941 to 1966 he smoked a brand of cigarettes called "Club" (Klubi 7) manufactured by Rettig and from 1966 to 1986 smoked "North State" (Nortti) manufactured by STOY. After Rettig raised the statute of limitations as a defense, Mr.

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Aho then further claimed that he continued to smoke Club after 1966 while at home.

Mr. Aho claims that he developed chronic bronchitis and emphysema in 1980. In 1986, he developed laryngeal cancer which resulted in the removal of his larynx. After the trial began, and without formally amending his complaint, Mr. Aho also suggested that he had developed lung cancer; however, this diagnosis was never confirmed.

Mr. Aho seeks damages in the amount of FM 636,000 ($145,000).

Plaintiff asserts a number of legal theories most of which revolve around the failure of cigarette manufacturers to adequately warn Mr. Aho and the public generally of the risks of cigarette smoking. He claims that manufacturers should warn even if there are governmentally required warnings on the packages and even if consumers have the information from other sources. He further claims that manufacturers have misled the public regarding the risks of smoking.

The defense argues that recovery for injuries due to smoking is not permitted under the Finnish legal system, that the public is nearly universally aware of the claimed risks from smoking, that the plaintiff has failed to prove that his injuries were caused by smoking and that the lawsuit is a sham/anti-smoking propaganda exercise. In addition, Rettig asserts the Statute of Limitations.

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Trial began with a hearing in June, 1988 and, since that time, there have been 14 one-day hearings at approximately three month intervals. Evidence was submitted primarily in written form with some witnesses testifying live to confirm and expand their written testimony. Plaintiff's evidence was presented at the first nine sessions. Sessions 10 through 14 primarily focused on the Defendants' case although there was some additional evidence from Plaintiff.

Plaintiff called several medical witnesses, some of whom were members of the Finnish National Board Health, to testify that Aho's injuries were caused by smoking (although most of them had never examined Mr. Aho). Plaintiff even produced witnesses to testify that Mr. Aho's "lung cancer" was caused by smoking although they had never examined him and the diagnosis of lung cancer was never confirmed.

A substantial portion of Plaintiff's evidence did not refer or relate to Mr. Aho at all but, instead, focused on the conduct of the tobacco manufacturers (including the Philip Morris licensee, Amer Tobacco, which is not a party to the case) and claims that tobacco manufacturers should be held criminally responsible for the selling of cigarettes. In accordance with his views expressed in his 1986 legal opinion, Professor Aurejarvi used this lawsuit as a forum for attacking the tobacco industry and spreading his anti-smoking views. After each court hearing, Professor Aurejarvi has had the portions of the hearing transcripts

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most favorable to plaintiff printed and distributed to interested groups. He has also acknowledged coordination with and assistance from anti-smoking groups in the United States.

Defendants' evidence demonstrated that Aho had failed to prove that his diseases were caused by smoking and identified a number of other risk factors associated with his claimed diseases. For example, his heavy alcohol use, low socio-economic class and human papilloma virus are all associated with an increased risk of laryngeal cancer. His occupational exposures in a shoe factory, a cotton mill, in mines and at an ice rink are all associated with an increased risk of emphysema. Defendants' evidence has focused on the facts of the case and has objected to Aurejarvi's "crusade against smoking and tobacco" as improper in the Helsinki City Court".

Aurejarvi continues to take the position that defendants have lied to the public by stating that smoking "does not cause cancer" despite defendants' efforts to explain to the Court that the tobacco industry's position is that cigarette smoking is a risk factor for lung cancer and certain other human diseases. [1]

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[1]Scientists use the term "risk factor" for a condition, behavior or other variable which has been statistically associated with a specific disease; a risk factor may or may not be causally related to the disease. Two variables are statistically associated when they occur frequently together or change together.

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The parties exchanged final briefs on December 3, 1991 and are scheduled to exchange reply briefs on January 13, 1992.

The last hearing was held on September 26, 1991. The Court indicated that its decision would be rendered at 1:00 p.m. on February 6, 1992. The parties may then appeal to the Helsinki Court of Appeals for a de novo review of the record on both factual and legal issues. No further evidence may be presented at the Court of Appeals and a decision would be expected in approximately one to two years. Thereafter, there may be a further appeal to the Finnish Supreme Court on the basis of legal errors only.

Neither Philip Morris nor its Finnish licensee, Amer Tobacco, are parties to this case although there have been frequent references to Philip Morris and Amer statements and activities.

In addition to the proceedings in the City Court, Professor Aurejarvi has also engaged in numerous other anti-smoking activities, including filing complaints with the Finnish Consumer Complaint Board, holding a seminar (with Finnish ASH) on criminal responsibility for selling cigarettes, filing a criminal complaint with the Helsinki Central Criminal Police, instituting a private criminal action on behalf of Mr. Aho in Espoo and orchestrating an injunction and request for criminal investigation against the tobacco industry by the National Agency for Welfare and Health.

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In August 1990, Finland adopted a new Product Liability Act (similar to the EEC Product Liability Directive) which became effective September 1, 1991. Professor Aurejarvi has claimed that it will make it much easier to sue tobacco manufacturers. The "test" of liability in the Act is based on whether a product is as "safe" as an ordinary consumer expects it to be. Given the extremely high level of awareness of the claimed risks of smoking, the tobacco industry does not believe consumers claiming to be injured as the result of smoking would be entitled to recover under this Act. Further, the Act only applies to injuries from products put into circulation after September 1, 1991 and clearly has no application to the Aho case.

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